

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

MAGLULA, LTD.,)	
)	
Plaintiff,)	Civil Action
)	No. 1:19-CV-01570-LO-IDD
v.)	
)	October 23, 2020
AMAZON.COM, INC.,)	10:32 a.m.
)	
Et al.,)	
)	
Defendants.)	

TRANSCRIPT OF MOTION HEARING PROCEEDINGS
(Viz Zoom Conference)
BEFORE THE HONORABLE IVAN D. DAVIS,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

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FRIDAY MORNING SESSION, OCTOBER 23, 2020

THE COURTROOM CLERK: The Court calls the final matter, Civil Action Number 19-1570, *Maglula, Ltd. versus Amazon.com, Inc., et al.*

May we have the appearances of counsel, starting with the plaintiff, please.

MS. SAHLSTEN: Good morning, Your Honor. This is Sonja Sahlsten on behalf of the plaintiff, Maglula. I'm here with my colleagues Jeff Berkowitz, Dave Mroz, and Jency Mathew.

THE COURT: Good morning.

MR. WILCOX: Good morning, Your Honor. This is Justin Wilcox from Desmarais LLP on behalf of Defendant Amazon with my colleagues John Desmarais, Laurie Stempler, and Priyanka R. Dev. And also on the line is a client representative from Amazon, Ajit Pai {sp}.

THE COURT: Good morning. All right. This matter is before the Court on a motion by the plaintiffs --

MS. SAHLSTEN: The defendants, Your Honor.

MR. WILCOX: The defendants, Your Honor.

THE COURT: The defendants for the plaintiff to supplement their answer to Interrogatories Number 1 and 3 and, essentially, to provide additional information concerning the claim charts about the accused infringing products in this case.

The Court has had an opportunity to review the motion, memorandum in support, the opposition to the motion, and reply to

1 that opposition.

2 Is there anything that the defendants would like to add to
3 your motion at this time?

4 MR. WILCOX: Yes, Your Honor. If you would indulge some
5 argument on our motion, we're prepared to go forward.

6 THE COURT: All right.

7 MR. WILCOX: May it please the Court, Your Honor. Amazon
8 is seeking supplemental infringement contentions from the
9 plaintiff, Maglula. Those contentions are required by the
10 parties' scheduling order, and they're requested through
11 Interrogatories Number 1 through 3.

12 This is a case about magazine loaders, and in case the
13 Court is not familiar, magazine loaders are devices that are used
14 to help a weapon's owner reload empty magazines with additional
15 ammunition.

16 Amazon does not manufacture any magazine loaders. The
17 accused products in this case were provided by third parties and
18 sold on Amazon's Website.

19 Now, Maglula's patents in this case cover a very specific
20 magazine loader. Maglula doesn't claim to have invented the
21 magazine loader, just to propose an improvement to it, and that
22 particular improvement has a very specific internal structure,
23 and, according to the claims, has to interact with a magazine and
24 ammunition they load in a very particular way, and one cannot
25 tell from pictures on a Website or the product just sitting in

1 the packaging whether or not that device is going to supposedly
2 meet Maglula's patent claims, and that's evidenced by the fact
3 that in Maglula's own contentions in their charts for the
4 particular products they did chart, they actually provide
5 pictures of an internal structure. And, you know, Your Honor
6 could view that as Exhibit E at 13 through 15. That's Exhibit E
7 of docket number 73.

8 Our problem with Maglula's contentions and interrogatory
9 responses is they don't provide adequate notice for all the
10 products that Maglula is currently accusing in the case. In
11 their infringement contentions, they've identified over 300
12 different products, but they've only charted nine of those
13 products, and they want to say that these products -- these nine
14 products they charted are representative, but there's no factual
15 basis in order to support that contention. You know, it's
16 evident that Maglula has done some analysis for the nine. They
17 charted them. We don't have an issue with those particular
18 charts for those nine products. What we do have a problem with
19 are what Maglula's contentions are for the other 300 products
20 that were never charted, and this is a particular problem because
21 sitting here today we're a little over five weeks away from the
22 close of fact discovery on November 30th.

23 (Noise interference.)

24 MR. WILCOX: Your Honor, that's not on my end. That's
25 background noise. Could we ask everybody else to mute? I've

1 been hearing some background noise.

2 THE COURT: It appears everyone is muted.

3 MR. WILCOX: All right. Thank you, Your Honor. So what
4 we're concerned with here is that they charted nine products,
5 they have another 300 products that haven't been charted, and
6 they provided no basis for why they weren't the same as the nine,
7 and here we're very close to the end of fact discovery, and we're
8 concerned about a shifting stance here, that somehow the nine
9 that they charted aren't really the ones that, you know, they're
10 going to focus on in their case going forward.

11 And for us to be able to prepare our defense, we need to
12 get an actual factual basis for these products, and that's what
13 we're seeking in this motion.

14 I would like to next turn to why representative charting
15 doesn't work in this case. This is a case, as Maglula says,
16 about counterfeits and knockoffs, and they've identified a
17 hundred different suppliers that have either supplied or sold
18 products on Amazon's Website, and that list of suppliers is on
19 exhibit -- is in Exhibit L at pages 6 through 9.

20 So, unlike the cases that Maglula cited where, for
21 example, there's an industry standard of how all particular
22 products are supposed to work, there is no such common or
23 standard design required by a standard body or anyone else for
24 magazine loaders. There's no requirement that the different
25 suppliers and manufacturers of the alleged knockoffs make the

1 magazine loaders according to the claims of Maglula's patents.
2 And, you know, we provided an analogy in our brief to cookies in
3 a supermarket, you know. If a bakery accuses particular cookie
4 brands, you know, Nabisco or Pepperidge Farm or Keebler of all
5 infringing their chocolate chip cookies' recipe, you know, but
6 only points to Keebler in its charts, then what's the basis that
7 the other, you know, suppliers of cookies are all following the
8 same recipe or providing, you know, the same finished product?
9 And that's the problem here. There's no basis for why these
10 uncharted products somehow conform to the ones they have charted.

11 And now I would direct Your Honor to Exhibit D to our
12 motion at page 4, and this is the cover pleading to Maglula's
13 infringement contentions, and this is where they supposedly
14 provide their basis for why these products all work the same, and
15 they say -- they provide a quote, it's in a quote -- "regardless
16 of classification, all products are structurally and functionally
17 the same." There's no other explanation, there's no citation to
18 any documents, and there's no expert declaration, so there's
19 literally no basis for us to go on as to why these products all
20 supposedly work the same.

21 THE COURT: Well, how do you define "structurally and
22 functionally the same"? Because you came back, I believe, in
23 your reply saying something about putting chocolate chips in the
24 cookie. I have to admit to you, I didn't get that analogy at
25 all, but, you know -- because you talked about the cookie, and

1 then you talked about them stocking it on the shelves, which
2 doesn't seem to me to have anything to do with the cookie itself,
3 unless you were going to relate that they somehow infringed and
4 there was a method infringement based on the way they stacked
5 them on the shelves, because they sell more of their cookies when
6 they have Keebler first, this one second, and this one third on
7 the shelf, but that's neither here nor there.

8 If you said structurally the same, and you said this one
9 has ten chocolate chip cookies, how do we know this one has ten?
10 Then doesn't the term structurally identical -- if this one has
11 ten chocolate chips and you say structurally identical, that has
12 to include the fact that the other cookie has ten chocolate
13 chips. So how else do you define the word structurally?

14 MR. WILCOX: Your Honor, our problem --

15 THE COURT: {Indiscernible}. It's made up, correct?

16 MR. WILCOX: I'm sorry, Your Honor, I didn't catch that
17 last point.

18 THE COURT: This cookie is really how -- the makeup of
19 something, correct?

20 MR. WILCOX: Correct, Your Honor.

21 THE COURT: Operationally, it's how it functions. If it's
22 made up identically and it functions identically to a product
23 they do name in the nine, how is that not a fact?

24 MR. WILCOX: Your Honor, it's not a fact --

25 THE COURT: How does that not put you on notice that

1 they're basically saying that these other 298 products are the
2 same as the nine we gave you? That's how I read it. I mean, all
3 those -- you just want them to go through the extra effort of,
4 okay, somehow they must have explained what you considered was
5 sufficient enough facts in the actual claim, right? Well, they
6 can just then say, well, in a supplemental statement to you, the
7 other 292 function like this and use the exact same facts that
8 they put in the claim chart for the nine that they gave you on
9 how it's structurally -- how it is structurally and how
10 these nine, how they're structured, how these nine, how they
11 function. And instead of just saying for those 292 others that
12 they're structurally and operationally identical, they could just
13 repeat the exact same language for how the nine are structured
14 and how they operate and say these other 292 are structured and
15 operate the same, which is what they did.

16 So, I'm confused on how those aren't facts. Because if
17 it's six -- if the first nine says that the plunger has to be at
18 a 90-degree angle and it has to be a plastic or rubber coating on
19 the back, and when you push this button, the thumb in the middle
20 of it, the V opens up to a regular V rather than an inverted V,
21 and all of those would be facts, and then they go to the 292 and
22 say it's structurally the same, to me that would mean that those
23 other 292, once you put your thumb on the -- you know, the
24 inverted V, it turns into a regular V, that that's what that
25 means. How can you interpret that to mean anything else?

1 MR. WILCOX: Your Honor, our problem with what they have
2 done is that they lack a factual basis for that statement, and if
3 we look at other cases --

4 THE COURT: Okay. So, then, you -- what do you mean? You
5 don't get a motion to dismiss because they state those are the
6 facts. For a 12(b)(6), those facts are assumed to be true. If
7 you go through the discovery process and find that those facts
8 are not true, if you all didn't agree to an uncontested statement
9 of undisputed or uncontested facts, then you file a summary
10 judgment motion and you win, but the discovery process in the
11 case goes on until you do that. That's why we have discovery.
12 No one has all the facts in discovery. That's why we go through
13 the discovery process.

14 MR. WILCOX: Yes, Your Honor.

15 THE COURT: What you're saying is they had no basis upon
16 which to state the facts they stated for the first nine in the
17 chart. If they had a factual basis for those nine and they say
18 these are structurally in whatever it is that's being studied,
19 then why do you think they don't have -- what do you know that
20 they didn't do that you believe that they were supposed to do to
21 acquire the factual basis for the 292 that weren't included in
22 the chart that they did do an investigation for, the nine that
23 were included?

24 MR. WILCOX: Your Honor, so I will answer it like -- I'm
25 not sure if I'm clear or not. This is not a motion to dismiss.

1 We're seeking to compel admissions or contentions.

2 THE COURT: I know that, but I'm saying you're saying they
3 have no facts. They have -- you're obviously arguing or stating
4 that they have sufficient facts for the claimed chart they set
5 forth or provided for with the nine. If they say everything
6 about these other 292 is the same as those nine, how does that
7 not place you on notice of how these other 292 are structured and
8 operate? They're structured and operate the exact same way as
9 the nine representatives they provided you. That's what they're
10 saying.

11 MR. WILCOX: Your Honor, our position is that Maglula
12 needs to come forward with some facts.

13 THE COURT: It's the facts in the nine they placed on the
14 chart.

15 MR. WILCOX: Your Honor, but they haven't presented any
16 facts as to why there's hundreds of other unclassified --

17 THE COURT: {Indiscernible}. How are they structured?
18 How does it operate? Why it operates that way has nothing to do
19 with a patent.

20 MR. WILCOX: A patent --

21 THE COURT: Why? Because someone wanted it to. That's
22 the answer to that question. I make a product. Why did I make
23 it? Because actually I wanted to make money. That's the answer
24 to every why.

25 MR. WILCOX: Your Honor, we're not --

1 THE COURT: To sell them to make money. There's your why.
2 We're not talking about why, we're talking about how. How did
3 this product function? And how -- what is it made up of? And
4 how did those parts, when they interact with each other, make
5 this product function? And if the product is -- they're claiming
6 you infringed upon them because you either sold them or you
7 posted them on your Website, and they say you assisted or aided
8 in the infringement; that those other 292 products have the exact
9 or substantially the same or similar components. Those
10 components interact with each other, they say, the same way, and
11 this is the end result.

12 MR. WILCOX: Your Honor, in similar situations courts have
13 held that what Maglula has done here is not sufficient. For
14 example, we cite the *Alacritech versus CenturyLink* case, that's
15 2017-WL-3007464, and I direct the Court to page 4. So there the
16 plaintiff in that case did something similar to Maglula. They
17 said, Look, take our word for it, we charted a couple just the
18 same as all these other ones where --

19 THE COURT: I don't understand what you mean by "take our
20 word for it". Their words are the facts that they place on the
21 claim chart for the nine representative samples. They didn't
22 give you a claim chart with all 300 with the other 292 stating
23 the exact same language that they put on the claim chart for the
24 nine that were in the process. How does that get you anywhere
25 when they already tell you that's exactly what we're going to do

1 by saying it's structurally and operationally the same?

2 MR. WILCOX: Your Honor, we're seeking the basis for that
3 statement that they're structurally and operationally the same.
4 There's no evidence that they --

5 THE COURT: You're asking a different question. You're
6 asking a question that sometimes people provide in motions when
7 they file motions to compel. What investigation did you do
8 pursuant to your ethical rules -- or Federal Rules of Civil
9 Procedure 11? What investigations did you do to come to the
10 conclusion that these other 292 accused products have a basis in
11 law -- a basis in law and fact for us to make the allegations
12 that they infringe our product? That's the question you're
13 asking. What investigation did they do that they can say they're
14 structurally and operationally the same as the nine
15 representative samples?

16 MR. WILCOX: Your Honor, we're not so much looking to
17 understand their investigation, we're wanting to know the result
18 of the investigation because we don't know -- we don't know if
19 these other uncharted products are made exactly in the same
20 manner. They admit it -- like, we all agree that these products
21 all come from different manufacturers and come from different
22 suppliers.

23 THE COURT: What difference does it make if they were made
24 in the same manner as long as they end up the same product?
25 Nothing from -- So, I mean, I could have used two nine-year olds

1 to make my product and you -- two nine-year-old girls, and you
2 could have used one 25-year old man and a 60-year-old man to make
3 the product. They would have not been made in the same fashion,
4 but the result is it ends up with the same parts, and if the
5 interrelationship between those parts makes that product function
6 the same, then they're infringing.

7 MR. WILCOX: Your Honor, that's the piece that we -- that
8 there's no basis for. They have no basis for saying that, look,
9 these --

10 THE COURT: -- I don't find --

11 MR. WILCOX: -- products are exactly the same.

12 THE COURT: It's a method. Is that the basis here?

13 MR. WILCOX: Say it again, Your Honor.

14 THE COURT: How something is done is a method. That's not
15 the accusation in the complaint, is it? Because they
16 continuously define them as counterfeit or knockoffs, so they're
17 saying the product itself, the way it's made and the parts it
18 uses and how those parts function interrelated to one another are
19 basically the same product for products we sell. That's the
20 infringement.

21 MR. WILCOX: That's what they're saying, Your Honor, and
22 for the uncharted products, there's no basis for knowing that
23 they actually are the same end-product, that they have the same
24 configuration of the nine charted products, and that's our issue.

25 THE COURT: So you're assuming that they're telling you an

1 untruth.

2 MR. WILCOX: We're not assuming that, but --

3 THE COURT: Structurally and operationally the same is not
4 a legal conclusion. That's a fact. They can either prove that
5 fact at trial or they can't. If they can't, they lose, you win.

6 MR. WILCOX: Your Honor, in similar --

7 THE COURT: That's what the discovery process is for.
8 Structurally and operationally the same is not a legal
9 conclusion. That's something -- those terms are something that
10 go in front of the trier of fact. They make the determination on
11 whether the accused products are structurally and operationally
12 the same as the product that you're -- of the product that you
13 have. They're the accused infringing product. They say they're
14 structurally and operationally the same. They say, Okay, if you
15 want more -- they're structurally the same because they contain
16 components A, B, C, D, E, and F. Component A acts like that.
17 Component B acts like that. Component C acts like that.
18 Component D acts like that. Component E acts like that. When
19 those products operate like that in tandem, what happens is a
20 bullet gets pressed into a rectangular magnetic box which is
21 called a magazine. There's your explanation.

22 MR. WILCOX: Your Honor, they haven't provided that
23 explanation for the uncharted products.

24 THE COURT: That's all you want, is that?

25 MR. WILCOX: We would like to know that for the uncharted

1 products, that they do have what you're saying, that components
2 A, B, C, D -- that's the problem. There's no -- they pointed out
3 components A, B, C, D are all there. You know, they're all there
4 in the nine products.

5 THE COURT: You want them to define structurally and
6 operationally more specifics?

7 MR. WILCOX: Yes, Your Honor, more specifically what
8 factual support -- and we have an interrogatory on that key
9 point.

10 THE COURT: {Indiscernible} is the support.

11 MR. WILCOX: Correct, Your Honor.

12 THE COURT: I mean, that's what a complaint is for. The
13 complaint is the -- the facts in the complaint are assumed to be
14 true. They either are or they're not. That's what the discovery
15 process is for. If, during discovery, you find out that they're
16 not structurally and operationally the same, then you go back to
17 them and say, are you willing to risk all your claims concerning
18 these particular accused products? Because our discovery has
19 proven that they do not have components A, B, C, D and E, and the
20 ones that do have A, B, C, D and E, when they interact with one
21 another, do not perform the function that you said they perform.
22 Then they say, we'll withdraw those claims, or they can be
23 stubborn and say we won't. And then you say, fine, but if you
24 have facts -- if you have acquired that information during
25 discovery, then they must admit to those as undisputed,

1 uncontested facts in a motion for summary judgment that is filed
2 by you.

3 MR. WILCOX: Your Honor, the problem is we aren't in the
4 complaint stage, we're in discovery, and we're trying to elicit
5 those facts that you're talking about to be able to do exactly
6 what you're saying, and they're not giving them to us. They
7 essentially just, you know, just picked things off of a Website.

8 THE COURT: You have nine products. Do you have the nine
9 representative products?

10 MR. WILCOX: We have the charts that they provided to us,
11 Your Honor.

12 THE COURT: You don't have any other products? Because
13 this is how patent cases normally work. You say it accuses -- At
14 no point -- you're always going to say, Well, how do we know what
15 they're saying is accurate? You purchase the products, you have
16 an expert tear them apart and see whether or not their statements
17 are actually true.

18 MR. WILCOX: That's what we're asking them to do for all
19 the products that they're accusing, Your Honor. They should have
20 a good faith basis for this, and they should answer our
21 interrogatories and provide --

22 THE COURT: How do you know they don't?

23 MR. WILCOX: Say it again, Your Honor.

24 THE COURT: How do you know they don't? If they -- they
25 believe they have conducted sufficient enough investigation to

1 make that claim that in fact and in law we believe that these 300
2 products infringe on our products. They made that statement in
3 the complaint.

4 MR. WILCOX: They didn't make that in the complaint, Your
5 Honor, they made it in their infringement contention which are in
6 discovery, and those are supposed to be guiding discovery, so --

7 THE COURT: In their complaint, they only name nine
8 products -- they only accuse nine products of infringement?

9 MR. WILCOX: Your Honor, I can't remember the exact
10 number, but it's nine or less. What's going on in contentions
11 now is this case has ballooned, you know, to be much greater than
12 what they put forward in their complaint. I believe in their
13 complaint that they had maybe -- at least at that time or -- no
14 more than the nine products, but now they've identified all these
15 other products and haven't provided the basis for why --

16 THE COURT: Where did you get the information that they
17 were including 291 others?

18 MR. WILCOX: Your Honor, they -- when we started
19 exchanging contentions -- Well, they first provided initial
20 disclosures on September 16th, and then we were in a meet and
21 confer process with them. They lasted -- the last supplement,
22 you know, we tried to work with them to get this information.
23 They served their last supplement the first week of October. And
24 then we said, look, this doesn't meet the standard. We met with
25 the --

1 THE COURT: That doesn't answer my question at all. My
2 question was, when is the first time you became aware that they
3 were supposed to be accusing 291-plus other products than was set
4 forth in the complaint?

5 MR. WILCOX: Your Honor, when we first got their first
6 contention, it was in September.

7 THE COURT: And you went to them and said what?

8 MR. WILCOX: We went to them and said, look, we don't
9 think this is a case where you can just chart a couple of
10 products and say everything is the same because we all know that,
11 you know -- they're from different suppliers, and you need to
12 provide a basis for these other uncharted products, and so that's
13 the disagreement that we've been having. We tried to come to
14 some kind of --

15 THE COURT: How are you going to get information that we
16 think that our -- this is the case for representatives, and we
17 believe we've provided sufficient information. So, then you met
18 and conferred in good faith in person or by telephone, and then
19 they asked you, well, since you believe that we have an
20 insufficient factual basis for making such a claim concerning the
21 other 291 products, what additional information do you believe we
22 should be providing in our supplement that would satisfy your
23 position concerning the factual basis? And then you told them --
24 And then they either said, well, we'll supplement with that
25 information or we won't. And they said, we won't, and that's why

1 we're here. Or did they say, yes, we will? Or did you provide
2 them the additional factual information that you thought was
3 necessary in order to believe their claimed product was enough?

4 MR. WILCOX: Your Honor, we explained to them that they
5 needed to provide some additional --

6 THE COURT: But wouldn't that be easy, if you just said,
7 this is the type of information you're looking for? And then
8 they would either provide it or they won't. That's not
9 difficult. That's what a good faith meet and confer is all
10 about. I understand that it's their ultimate obligation to
11 provide that information, but they're not going to purposely --
12 we have to assume that they're not purposely going to provide
13 that information in a supplemental claim chart or in the
14 supplemental answers to those interrogatories if they know it's
15 unclear.

16 MR. WILCOX: Your Honor, when we met and conferred, we
17 told them this was our problem, and they ultimately came back
18 with the two sentences that are just conclusory that these are
19 structurally and operationally identical.

20 THE COURT: But you needed to provide them information
21 saying this is the type of information we're looking for, A, B,
22 C, D, and E. Say that specifically and see what they come back
23 with then.

24 MR. WILCOX: Your Honor, we made --

25 THE COURT: Sometimes lawyers just think differently when

1 it comes to what they believe is and is not sufficient. That's
2 why our ten-story building stands at 401 Courthouse Square.

3 MR. WILCOX: Well, Your Honor, under the caselaw that
4 we've cited and the other cases we've cited, you're coming back
5 with that very conclusive {indiscernible} --

6 THE COURT: -- I think both of those cases are based on a
7 specific set of facts, which any good lawyer can distinguish from
8 any other case, in this case in particular. That's why lawyers
9 get paid.

10 And let's first start with the fact that I probably can
11 assume -- I don't remember every case that was cited, but they're
12 not from the Eastern District of Virginia or the Fourth Circuit,
13 which means they're completely irrelevant from a precedential
14 value in this court. You know, everyone wants to be in the
15 Eastern District of Texas and the Northern District of California
16 when they deal with patents. There's a reason we don't have
17 local patent rules in the Eastern District of Virginia. We don't
18 find that they actually move the process -- as well as those
19 attorneys for these cases, so then it just leaves open, let's
20 just dispute what those rules mean.

21 MR. WILCOX: Your Honor --

22 THE COURT: But you obviously cannot say that
23 representative charts are inappropriate in every set of
24 circumstances. So, the only question is, is representative
25 claimed charts appropriate under this set of circumstances, and

1 that can only be made -- that determination can only be made on a
2 case-by-case, fact-by-fact determination. So, you can cite other
3 cases because it's not the same as this one.

4 MR. WILCOX: Yes, Your Honor. It is a case-by-case,
5 fact-by-fact determination, and I think we've come forward and
6 shown why it isn't that type of case, because these products all
7 don't come from the same manufacturer and --

8 THE COURT: But saying structurally and operationally
9 means something. To me, those are facts that mean these 291
10 offerings, they're basically the same as those. So, if you know
11 how those nine work, then you know how -- then you know what
12 those nine are made up of, and you know, based on the way they're
13 made, what they're made up of, that they operate and function in
14 a particular way, then you know how the other -- what the other
15 291 are made up of and how they function when those components
16 react together. How does that not provide you sufficient notice
17 when all you have to do is go get one of the products and tear it
18 apart?

19 MR. WILCOX: Your Honor, beyond the notice of the
20 contention, we have the interrogatories, and the interrogatories
21 asked Maglula to come forward as the party that bears the burden
22 of proof on infringement and set forth its proof of why, you
23 know, it thinks these products infringe. And so there they must
24 do more than just, you know, state a conclusion that these things
25 are structurally and operationally the same. They need to come

1 forward with facts and provide those facts.

2 THE COURT: What facts?

3 MR. WILCOX: The fact of how they have come to the
4 conclusion that these products are structurally and --

5 THE COURT: You're asking for their investigation, how
6 they can concluded what they concluded. That's actually an
7 investigation. That's not a fact.

8 MR. WILCOX: Your Honor, these are contention
9 interrogatories, and we're entitled to understand what their
10 contentions are and what proof they're going to come forward with
11 at trial.

12 THE COURT: What's deficient in their contentions -- in
13 those interrogatories, except for how you conclude -- because
14 what they concluded is a fact. You may not believe that fact,
15 but that's the discovery process. You go through discovery to
16 disprove the facts that they set forth. But what they set forth
17 is a fact until you disprove it. How they came to those facts is
18 their investigation. Is that what you want?

19 MR. WILCOX: Your Honor --

20 THE COURT: If you want that, then say so. Don't hide it
21 in the cloak of saying these are facts. That's not a fact. How
22 you came to that conclusion is not a fact.

23 MR. WILCOX: Your Honor, just stating a conclusory
24 statement that these products, all 300, work structurally and
25 operationally the same isn't a fact, it's just a contention.

1 What are the facts that support that? What are the, you know,
2 the items that they've observed in those other 300 products that
3 lend -- you know, support that conclusion? That's what we're
4 seeking.

5 THE COURT: Didn't they give you that for the nine?

6 MR. WILCOX: They gave it to us for the nine; they
7 haven't --

8 THE COURT: You just want them to repeat that 291 more
9 times?

10 MR. WILCOX: Your Honor, we're not trying to do a makework
11 exercise here, but if someone were to say I looked at nine
12 products, those products --

13 THE COURT: I'm trying to help you out here. This is your
14 motion. You want something from them. I'm asking you what you
15 want from them, and you're not providing me an explanation that I
16 even understand, what you want from them.

17 MR. WILCOX: Your Honor, what we're asking -- and this is
18 what -- the relief the court granted in the Alacritech case that
19 I identified. We're asking for them to either provide a claim
20 chart for all of these other infringed products, or -- we're not
21 trying to make makework -- or if they can explain and support,
22 you know, with specificity and supporting documents that these
23 uncharted products work the same as the charted products, that's
24 what we're looking for.

25 We're looking for factual information, citations to

1 documents or pictures of why these products are supposedly the
2 same -- these uncharted products are supposedly the same as these
3 uncharted [sic] products, and that's the --

4 THE COURT: And you want them to repeat the facts that
5 they put in the representative nine for the 291 other products.

6 MR. WILCOX: Your Honor, we want -- we want --

7 THE COURT: That's what you want, because they don't have
8 to give you all the documents that support -- that's trial. This
9 is discovery.

10 MR. WILCOX: Your Honor, in discovery we're entitled to
11 understand what the basis --

12 THE COURT: I understand this.

13 MR. WILCOX: And so, well, if they're going to come
14 forward at trial with, you know, all these different documents
15 stating these uncharted products suddenly --

16 THE COURT: -- they can't --

17 MR. WILCOX: -- work in a particular way --

18 THE COURT: The simple procedures do not authorize them to
19 utilize any documents to support a motion or at trial that they
20 did not provide you during the discovery process.

21 MR. WILCOX: That's absolutely correct, Your Honor, but
22 what we're seeking here -- we're in discovery. We're seeking the
23 basis and the foundation for their case against --

24 THE COURT: {Indiscernible} the basis. Just -- stop --
25 see, those are conclusions. Those are legal terms. Just say

1 what you want.

2 MR. WILCOX: We want to know how the other uncharted
3 products are supposedly the same as the charted products.

4 THE COURT: So, you want them to repeat the information
5 they said in the nine representative 291 other times.

6 MR. WILCOX: Well, if it requires that for each particular
7 product, then that's what we would need to do, because, you know,
8 in our interrogatory, even if the Court has kind of a dim view of
9 contentions, our interrogatories say, what's your basis for
10 infringement for each one of these uncharted products? And so
11 we're entitled to the facts that they're going to elicit and
12 they're going to rely on later at trial. That's part of the
13 discovery process. We're entitled to that information so we,
14 ourselves, can form defenses.

15 I mean, essentially right now they're saying, look, here
16 are all these other uncharted products, Amazon, you go out and
17 figure out why we say they infringe or how they exactly infringe,
18 and they're putting that onus on us, but the onus is on them to
19 first come forward with their exact theory for those products and
20 their support for that, and then we can start investigating our
21 defenses in terms of looking at the documents that they're citing
22 to or looking at the pictures they're citing to for these other
23 uncharted products, because these uncharted products, they don't
24 all come from the same seller, they don't all come from the same
25 manufacturer, so there's no way sections in other cases one can

1 say, well, look, this one product, this is a microchip and it
2 practices the DDR3 specification. It has to do all these things
3 or it can't be DDR3. So, I'm going to say that every chip
4 that DDR3 --

5 THE COURT: Okay. Yes. Let's go to the plaintiff. Where
6 did you come up with the nine representative classes for the
7 claim chart?

8 MS. SAHLSTEN: Your Honor, the way we identified the nine
9 representative classes is by looking for particular telltale
10 signs or other idiosyncrasies between the various counterfeits
11 and copies that we've identified to date. Some of them are very
12 particular and very easy to spot once you know about them. For
13 example, one class of products has maglula,com instead of .com.

14 COURT: Could you hold on for a second? Could you hold on
15 for a second, please?

16 (Brief pause in proceedings.)

17 THE COURT: Sorry about that interruption.

18 MS. SAHLSTEN: No problem, Your Honor. So, your question
19 was about how did we identify the nine different products to
20 include in a representative chart, and we did that by looking at
21 unique telltale signs that they were counterfeits or copies.

22 THE COURT: And --

23 MS. SAHLSTEN: And, like I said, these are really specific
24 telltale signs. For example, maglula,com instead of .com, or in
25 another class, the lock on the side of the loader is lacking two

1 raised ridges which the genuine products have.

2 So, to be clear, we selected the nine products and did
3 representative charts, one for each of the nine, not because
4 there are any differences that matter, but because there are
5 differences that don't matter for purposes of infringement.

6 THE COURT: That's a slippery slope. Every party can come
7 into a -- you would be amazed at how opposing parties differ from
8 what matters and what doesn't matter, what's relevant and what's
9 not relevant. So that's when you get into trouble. They have
10 the right to determine whether the differences matter or don't to
11 their defense.

12 MS. SAHLSTEN: Right, and the way they will do that is by
13 looking at the language of the claim. For example, none of the
14 claims are directed to the type font that's on the loader itself.
15 None of them are directed to the orientation of the lock button.
16 So, what I mean when I say there's no differences that matter, I
17 mean matter for purposes of the claim, and that's really what the
18 infringement analysis is going to be focused on.

19 And, as the parties have discussed in all the back and
20 forth meet and confers, so far Amazon has not identified any
21 differences that matter for purposes of infringement. So, while
22 Maglula thinks that doing one chart would have been sufficient,
23 we went above and beyond what was required. We did nine because
24 there are these little differences, and we wanted to make sure
25 that Amazon had notice of our infringement theories and how they

1 did not change over these nine different products --

2 THE COURT: -- {Indiscernible} in 291 other products and
3 said they're the same as one of these nine, and that's why we
4 believe they infringe?

5 MS. SAHLSTEN: Right. So --

6 THE COURT: They have the same structure and the same
7 operation of one of the -- at least one of these nine in the
8 representative claim -- in the representative class?

9 MS. SAHLSTEN: That's exactly right.

10 THE COURT: You've tested or looked at or tore apart 291
11 products?

12 MS. SAHLSTEN: We have not torn apart or tested 291
13 products, but that's not required. We have a basis to assert
14 that these are counterfeit, that these infringe.

15 THE COURT: I mean, what did you do to even know that
16 these 291 products have the same components?

17 MS. SAHLSTEN: So, Amazon sells all of these products
18 under the -- under the same or similar ASIN, which is an
19 Amazon-specific identification number on their system. For some
20 of these products, we have been able to track them down and
21 physically inspect them and test them in a couple different ways.
22 Some, our client Maglula has bought and sent to us for
23 inspection. Some we've bought and inspected, and some we have
24 received from Amazon's customers who thought they were buying a
25 genuine Maglula only to receive a counterfeit, upset about the

1 quality or that it breaks, and then reached out to Maglula to
2 alert us to that defective product. And that's, you know, part
3 of the way we discovered the counterfeiting problem in this case
4 in the first place. For the rest, those products are sold and
5 have been offered for sale on Amazon platforms under the very
6 same ASINs and product listings as the other counterfeit
7 products, and that's our basis for asserting that the rest are
8 the same.

9 THE COURT: What does that mean? Because they use the
10 same number, that means every product that has that number had
11 the same components, and those components functioned interrelated
12 that the end result is the same? That's what you're saying,
13 without having inspected those products?

14 MS. SAHLSTEN: Correct, and we would --

15 THE COURT: How? How do you say -- do they put on their
16 Website that in their merchandise -- the listing of their
17 merchandise and their manuals that every product that we list
18 and/or sell that has a specific ASIN will have the same
19 components, and when those components interact with one another,
20 they will have the exact same resulting function as their
21 particular products? And then you went and purchased that
22 product, figured out what components it did have, how it
23 functioned, and came to the conclusion, well, then, that these
24 other 40, since they said they would do that, we're saying that
25 they do that? So, essentially, you've got structurally and

1 operationally the same from the ASIN numbers?

2 MS. SAHLSTEN: Exactly. The ASIN number is used to
3 identify products that are the same. So that's, you know, how
4 we've been able to --

5 THE COURT: How do you know that? Where does it say that?

6 MS. SAHLSTEN: So, Amazon uses the ASIN numbers in its own
7 system as part of -- What Amazon is known for is getting you your
8 products quickly. So, I can go onto Amazon and find the product
9 I'm looking for, and in Amazon's back-end system those products
10 are all grouped by this ASIN. And here I am in Washington, D.C.,
11 they're back-end system is going to determine which of those
12 products is closest to me to get it to me quickest. But if my
13 family is down in Florida, they might determine that it's closer
14 if they ship it from a factory -- or a warehouse that's closer in
15 Florida. And the way that linking is done, how does Amazon know
16 which product to fulfill for an order, that's all linked by the
17 ASIN system. So it's Amazon who says that the product sold under
18 the same ASIN offer the same.

19 THE COURT: Well, did you put that as additional factual
20 information in responding to Interrogatories 1 through 3 and in a
21 supplement to the claim chart concerning the other 291 products?
22 Because they're looking for factual support for why you can make
23 structurally and operationally the same. If you tell them in the
24 chart and in supplemental responses to Interrogatories Number 1
25 through 3 that we think they're structurally and operationally

1 the same because you said it, we got that statement from you, and
2 we assume you're telling the truth when you make that statement,
3 is that what's --

4 MS. SAHLSTEN: Yes, yes. So, let's talk about the --
5 what's asserted and what the factual basis is. We have said
6 that, regardless of the classification, they're structurally and
7 functionally the same, they dismiss that as attorney argument,
8 but, as you know, Your Honor, that's facts.

9 THE COURT: Okay. I'm trying to determine how you
10 determine that fact when you specifically said you weren't
11 capable of tracking down some of those products. Some of them
12 you tracked down and you pulled apart and you looked at and had
13 an expert probably say, Yeah, that closes that, that goes to the
14 right, that clicks here, that wheel turns, that happens when the
15 arm falls and a bullet loads or a cartridge loads into a
16 magazine. That's a factual scenario. And you can do that with
17 products that you have in your possession that you can tear apart
18 and look at, but ones you couldn't find, how do you make the
19 determination that they operate in the same fashion?

20 MS. SAHLSTEN: Again, that goes back to Amazon's own
21 organization and representations that these products are the same
22 by the nature of listing them under the same ASIN.

23 THE COURT: What's the definition of the words -- they
24 provided definition of the words "the same"? The same just means
25 magazine loaders, or does it mean magazine loaders with

1 components A through E, which, when they function interrelated,
2 does this?

3 MS. SAHLSTEN: It's closer to the latter. The ASIN is --
4 There's not a general ASIN for magazine loaders. The ASIN is for
5 the specific magazine loader listed on the product page.

6 THE COURT: That's what you told them in the good faith
7 meet and confer, and they said that's still an unacceptable
8 explanation.

9 MS. SAHLSTEN: Yes, and we have asked for discovery on
10 every single ASIN, every single order I.D. that we've known so
11 far -- that we've been able to identify so far, and those that
12 are related, and so far they have not provided us that discovery.
13 For example, all of their product listing pages have photos.

14 THE COURT: What they provided to you. What's their
15 explanation on why they didn't provide it? Because you said you
16 filed a motion or filed a motion.

17 MS. SAHLSTEN: Yes. So, their explanation has varied. My
18 best understanding of their current explanation is that their
19 product listing pages are dynamic pages, and they do not create a
20 static archive of that product listing page. So, when we say
21 give us information on, you know, ASINs 1 through 30 and give us
22 pictures of those products and tell us the sellers, they don't
23 have a record of that product listing page as it existed at the
24 time that they offered it for sale, but they do have a system
25 behind that listing page of widgets that so far they have not --

1 or at least they have not produced. I don't know if they've
2 searched, but they have not produced information from behind that
3 database, and that's what we need to be able to do any further
4 supplementation.

5 THE COURT: Are there any additional facts you currently
6 have in your possession which you don't need to acquire from them
7 during discovery that you can provide them in a supplementation
8 that would more support your argument or your statement that
9 these other products are structurally and operationally
10 identical?

11 MS. SAHLSTEN: I can think of at least one thing, which is
12 that we have offered to allow them to come inspect the products
13 themselves. We have representative samples from each of the nine
14 classes, and they can come and inspect those. To the extent
15 they're arguing that these are somehow not operationally
16 identical, you know, we've offered to allow them to come down and
17 inspect and test them themselves. We've already produced photos
18 of the products showing that they are structurally --

19 THE COURT: The ones that correlate the 291 to the 9,
20 because they don't have representative -- you don't have all 291
21 products, so the offer to inspect 180 products still doesn't deal
22 with the 111 that you don't possess, which they don't have an
23 opportunity to inspect. Somehow they're uncomfortable with your
24 statement of structurally and operationally the same, based on
25 the information you provided to them right now, especially now

1 that you said that you haven't had an opportunity to -- that's
2 why I asked you, are there any further facts that you have
3 currently in your possession that you have utilized to conclude
4 that these other products, especially the ones you have not had
5 an opportunity to inspect, have the same component and function
6 the same as the representative nine?

7 MS. SAHLSTEN: We have provided --

8 THE COURT: Then that's your explanation. These are all
9 the facts we have to support the statement of structurally and
10 operationally the same. We can provide you additional facts when
11 you supplement your discovery. And if that's a problem, then
12 we'll deal with that problem, but you can only provide them the
13 facts you have. They, for some reason, don't believe you're
14 doing that. That's why I asked, are there any more facts that
15 you can provide to supplement? If there are not, then you tell
16 them that.

17 MS. SAHLSTEN: There's nothing else that we can provide at
18 this point. And, Your Honor, you're spot on. We're waiting for
19 discovery to make --

20 THE COURT: Besides the fact that you say that they're
21 structurally and operationally the same because you categorized
22 them under a specific ASIN number and your own statements that
23 say if they're categorized under that number, this is what that
24 means.

25 MS. SAHLSTEN: Exactly.

1 THE COURT: And have you provided them that information --

2 MS. SAHLSTEN: -- yes --

3 THE COURT: -- concerning the other 291?

4 MS. SAHLSTEN: We -- yes -- the -- our reason for
5 asserting that the other 291 are the same is because Amazon
6 considers all products listed under the same ASIN as the same.

7 THE COURT: Then provide them that fact and show them
8 exactly where they say that. Whether you need to make a snapshot
9 of a Website, you need to acquire one of their manuals, find
10 exactly where they say anything that we list under this ASIN
11 number means this, and you supplement your interrogatories and/or
12 claim chart, and that additional information, this information
13 that we found in our investigation plus your statement as set
14 forth in Exhibit 1 gives us what we believe is a sufficient
15 factual basis to accuse those other 200-and-something products
16 other than {indiscernible}. If they don't think that's
17 sufficient enough for a claim charge, then you're right, you
18 don't have to prove -- all you have to do is put on notice, and a
19 part of your notice is based on their own representations of how
20 ASIN is assigned, than to win an argument saying that's not
21 enough when you yourself said that makes them structurally and
22 operationally the same.

23 MS. SAHLSTEN: Yes, Your Honor, and we would be willing to
24 provide a supplement along those lines to add something specific
25 about linking up that ASIN relationship based on Amazon's own

1 representations.

2 THE COURT: All right. Counsel, anything else?

3 MS. SAHLSTEN: Your Honor, the only thing I would bring up
4 is about the order. You'll see that Amazon submitted a revised
5 proposed order with their reply brief, and I just wanted to alert
6 you to the second item on that order about their request to limit
7 the accused products in this case. You know, that is a big shift
8 from --

9 THE COURT: We aren't going to get to that right now
10 anyway because that's a motion for a protective order. That's a
11 separate request. You can't ask for a protective order in
12 opposition to something during a motion that you have. You can't
13 do that. That has to be another motion. This as motion to
14 compel, not a motion for a protective order.

15 MS. SAHLSTEN: Thank you, Your Honor.

16 MR. WILCOX: Your Honor, may I just add something in
17 rebuttal?

18 THE COURT: Of course.

19 MR. WILCOX: So, the problem here, Your Honor, is that
20 they've identified 308 and they've only charted 9. So, if their
21 contention is that anything with the same ASIN would work the
22 same way as what they charted, that would be one thing, but it's
23 not. Their position is that all these other uncharted ASINs that
24 are different ASIN numbers, supposedly are the same as the ASINs
25 they charted, but they haven't even provided a correlation for

1 all this. For all those uncharted ASINs, they have not
2 identified which ones supposedly fall under which bucket. So
3 there are two problems here. They haven't charted each ASIN; and
4 number two, even if they had charted each ASIN, if they were
5 saying somehow the other ASINs correlated to the ones they've
6 charted, they haven't provided that. So, we don't have notice of
7 what exactly is their infringement theory for these other 290
8 ASINs that they haven't charted.

9 THE COURT: Ms. Sahlsten, that's a whole 'nother ball of
10 wax. If your additional fact is you're saying these other 291
11 products are structurally and operationally the same because they
12 use the same ASIN, that's one thing, and because Amazon has said
13 everything that uses this ASIN is structurally and operationally
14 the same, so we're using your own words against you. He just
15 represented that's not what you said, they're not those products,
16 that they're not nine different ASINs, and every other of the 291
17 products have one of those nine ASINs. He's saying you're using
18 300 different products with 300 different ASINs.

19 MS. SAHLSTEN: So, there are more than nine ASINs, and
20 that's because Amazon apparently allows some of its sellers to
21 create new ASINs, and sometimes the very same products --

22 THE COURT: Your argument was based on representations
23 made by Amazon concerning their own ASINs? So, all three -- do
24 you have in your possession ASINs that cover all 300 products?

25 MS. SAHLSTEN: We have ASINs, I believe, for just over

1 200, and then for the remaining approximately 100, we either have
2 order I.D. numbers or SKUs or seller I.D. numbers, which we have
3 provided to Amazon and in turn asked them to give us the ASIN
4 number.

5 THE COURT: Well, I don't know specifically what the ASIN
6 numbers mean, but, generally speaking, in my experience I know
7 what an SKU is. That's an exact product, like fingerprints. One
8 SKU goes to one particular couch.

9 MS. SAHLSTEN: So, the ASIN is not quite as specific as a
10 SKU because multiple products can have the same ASIN. Multiple
11 individual products can have the same ASIN.

12 THE COURT: So how many products would you say, of the
13 291, fit under the nine representative ASINs that you charted in
14 your claim chart?

15 MS. SAHLSTEN: So one clarification based on your question
16 is that there are not just nine ASINs, and that's because the
17 exact same class of products has, in fact, been sold under
18 multiple ASINs. So you may have a situation -- there's one that
19 comes to mind, is our Class A product. That product has been
20 sold under multiple Amazon ASINs, and we've explained that in our
21 contentions and in discovery responses.

22 THE COURT: But the ASINs -- how many ASINs have you used
23 that encompass the nine representative products? I mean, how
24 many ASINs apply to those nine products?

25 MS. SAHLSTEN: The roughly 200 ASINs that we have been

1 able to identify to date correlate to the nine categories.

2 THE COURT: Okay. Well, then, you make that statement.
3 You give him the exhibit that shows your own words say that if
4 they fall under these ASINs, they are operationally and
5 functionally the same, and then you provide the information for
6 the other hundred that don't fall under those representative nine
7 with the 200 ASINs {indiscernible} and say why those -- I mean,
8 you know, what is it about the SKU that says, if it has this SKU,
9 that functions the same?

10 Now, do the ASINs have SKUs with them as well, some of
11 those products?

12 MS. SAHLSTEN: Sometimes. We do have multiples of those
13 categories with information. Sometimes we have an ASIN, an order
14 number, the seller I.D. number, and SKU. Sometimes we --

15 THE COURT: And all of those numbers are listed in the
16 current representative claim chart?

17 MS. SAHLSTEN: They are all listed in our original
18 contentions and refer to the same chart.

19 THE COURT: Okay. And then -- so those other hundred fall
20 under one of those numbers that you state in relation to one of
21 those nine products in the class?

22 MS. SAHLSTEN: That's right.

23 THE COURT: So it would be the ASIN, the SKU, the order
24 number, two of the three, three of the three --

25 MS. SAHLSTEN: Yes. And to the extent Amazon is

1 requesting that we plot each of these 300 products into one of
2 the nine classes, we are willing to do that. We just need
3 discovery from Amazon to be able to go through that exercise. We
4 have asked them for the pictures of those products or the
5 products themselves, and once we get them we can go ahead and
6 plot those into the nine categories, but we can't do that right
7 now.

8 THE COURT: You can supplement with the information that's
9 in your possession with a better explanation, is what appears to
10 be the statement. If that explanation isn't good enough, then
11 your fallback position is, well, that's the only explanation we
12 can give you based on the information currently in our
13 possession. If you want a better explanation, give us some more
14 of the discovery that we've requested.

15 MS. SAHLSTEN: That's right, Your Honor.

16 THE COURT: And if they -- if that's supported by statute
17 or other legal authority, then the Federal Rules of Civil
18 Procedure and the local rules of this Court provide a procedure
19 by which they can address that concern.

20 Anything further, Mr. Wilcox?

21 MR. WILCOX: Yes, Your Honor. I just want to circle back
22 and point out that what counsel has said and admitted here is
23 that of at least 200 different ASINs, they only charted nine, and
24 they haven't correlated, like the balance of uncharted, all to at
25 least the ones they charted. So, I mean -- so what we're left

1 with here is, what's the basis for saying these other 200 ASINs
2 actually infringe if they can't even right now line up, you know,
3 those ASINs to --

4 THE COURT: She's saying that she has information in her
5 possession, which is a representation made by Amazon itself in
6 some form or fashion, that says if these products can be
7 listed -- a product is listed under a specific ASIN, then our
8 proof is that it has pretty much this type of structure and this
9 type of function. Those are the words Amazon used. That's her
10 support, your own words.

11 MR. WILCOX: Your Honor, she's saying that for just a
12 particular ASIN, and I'm not willing to accept that --

13 THE COURT: -- Well, why don't you ask her. So, of the
14 200, the other 200, fall within one of those categories of ASINs,
15 because there's more -- she said each product doesn't have just
16 one ASIN. There are some of the nine products that could have
17 had more than one ASIN, but for 200 products -- like, nine
18 products can encompass 25 ASINs, that those 200 products fall
19 under one of those 25 ASINs, and your words say, if they fall
20 under one of those 25 ASINs, they're structurally and
21 operationally the same as those products within that ASIN.
22 That's what I heard.

23 MR. WILCOX: Your Honor, that's counsel's position, but
24 they haven't -- she hasn't done that. She hasn't done that once.

25 THE COURT: And I ordered her to do that.

1 MR. WILCOX: Well, Your Honor -- and Your Honor, our basis
2 is that, you know, these ASINs are all separate products, and so
3 they should come forth with --

4 THE COURT: She is going to supplement to show your own
5 words that supposedly say they're really not. If you want to
6 dispute that fact, you have an absolute right to do so, but that
7 has nothing -- you want a supplementation; I've ordered her to
8 give you additional supplementation. If you think that
9 supplementation is false, well --

10 MR. WILCOX: Your Honor, I just --

11 THE COURT: It's a tough road to hoe to prove that,
12 because she's making representations as an officer of this Court,
13 and this Court accepts every counsel's representations, unless
14 opposing counsel has information in their possession that would
15 suggest that that representation is untrue, and let's tread very
16 lightly on statements that suggest that.

17 MR. WILCOX: Absolutely, Your Honor. I just want to make
18 clear that the supplementation will be that all accused products
19 will provide -- that counsel will provide some type of
20 correlation to the items that are already charted, and then some
21 factual basis for why there's a correlation there.

22 THE COURT: I don't know what you mean by correlation to
23 the -- I and Ms. Sahlsten have had a statement about the
24 information in her possession and that she will supplement the
25 interrogatory responses to Interrogatories 1 through 3 and the

1 claim chart to include that additional information that's
2 currently in their possession. That's all they can do. They
3 can't supplement a claim chart and interrogatories with
4 information that they don't possess.

5 MR. WILCOX: Your Honor, but they do have to have a basis
6 for having identified these 300 products and --

7 THE COURT: They will provide you with additional
8 supplementation based on the information that they have in their
9 possession. If you think that is insufficient, the Federal Rules
10 of Civil Procedure and the local rules of this court have a
11 process by which to address your concerns. If you believe that
12 they have failed to state a claim based on their claim chart
13 because they lack sufficient facts, there's a rule for that.

14 MR. WILCOX: Yes, Your Honor.

15 THE COURT: But I can't order them to give you something
16 they don't have.

17 MR. WILCOX: Understood, Your Honor. Thank you very much.

18 THE COURT: I would be surprised if the answer to this
19 question would be no. Does anybody need clarification about what
20 I just said?

21 MR. WILCOX: No, Your Honor.

22 MS. SAHLSTEN: No, Your Honor. Thank you.

23 THE COURT: I'm pleasantly surprised on a Friday
24 afternoon. Any and all supplementations will be -- when is
25 discovery cutoff?

1 MR. WILCOX: November 30th, Your Honor, for fact
2 discovery.

3 THE COURT: Okay. Fact discovery. Any and all
4 supplementation will be due no later than -- have you filed that
5 other motion?

6 MS. SAHLSTEN: Yes, Your Honor, we have filed the other
7 motion.

8 THE COURT: Have you noticed it?

9 MS. SAHLSTEN: Yes, it's been noticed for next Friday,
10 10 a.m.

11 THE COURT: Any and all supplementations concerning this
12 motion the Court has ordered will be due no later than noon next
13 Thursday, the 29th.

14 MS. SAHLSTEN: Thank you, Your Honor.

15 THE COURT: And the parties really need to have come to an
16 impasse concerning the other motion. Before I get off, I'll
17 just -- which I say often in court now, we're just via Zoom --
18 good faith meet and confers, in this Court's opinion, like a
19 settlement conference, it's about compromise. It's not my way or
20 the highway, take it or leave it. You don't come into a good
21 faith meet and confer with a position and leave that meet and
22 confer simply because the other party hasn't given us everything
23 that we've asked for, because getting everything that you've
24 asked for is not compromising.

25 And the majority, in this Court's opinion, of those meet

1 and confers should be, because the Rule says, in person or by
2 telephone. There's a reason for that rule. The experience of
3 the Court has shown that when people just send letters back and
4 forth, and e-mails back and forth, disputes don't get resolved.

5 MS. SAHLSTEN: Understood Your Honor, thank you.

6 MR. WILCOX: Understood, Your Honor.

7 THE COURT: Anything further?

8 MR. WILCOX: No thank you, Your Honor.

9 MS. SAHLSTEN: No, Your Honor.

10 THE COURT: All right. Be safe out there.

11 MR. WILCOX: Thank you, Your Honor. Have a nice weekend
12 Your Honor.

13 THE COURT: You, too.

14 (Proceedings adjourned at 11:40 a.m.)

15 **C E R T I F I C A T E**
16

17 I, Scott L. Wallace, RDR-CRR, certify that
18 the foregoing is a correct transcript from the FTR
19 recording of proceedings in the above-entitled matter.

20 /s/ Scott L. Wallace

10/26/20

21 **Scott L. Wallace, RDR, CRR**
22 **Official Court Reporter**

Date